WA 181/2007
BEFORE
HON'BLE MR. JUSTICE D.BISWAS
HON'BLE SMT. JUSTICE A.HAZARIKA

D.Biswas, J

This appeal is directed against the judgment and order dated 10.4.2007 passed by a learned Single Judge of this Court in WP(C) No. 1043/2007. The writ petition was filed for setting aside the order dated 26.2.2007. issued by the respondent No.4 in the writ petition whereby the petitioner/appellant was directed to hand over charge of the office of the Member-Secretary of the Pollution Control Board, Assam to the senior most officer/engineer on his attaining the age of superannuation on 28.2.2007 till a regular Member Secretary is appointed. The appellant challenged the said order on the ground that the Board adopted a resolution in its meeting dated 21.2.2007 raising the age of superannuation of the employees of the Board to 60 years and, therefore, the appellant was entitled to continue till he attains the age of sixty. The learned Single Judge after considering the various provisions of the Act and the Rules dismissed the writ petition refuting the claim of the appellant that the Board, independent of the control of the State Government, is competent to raise the age of superannuation in respect of its employees unilaterally.

2. We have heard Mr DK Mishra, learned senior counsel for the appellant and Mr KN Choudhury, learned Addl. Advocate General, Assam. We have also heard Mr. BC Das, learned senior counsel for the Board; Mr DC Bora, learned counsel for respondent No.5 and Mr BD Konwar, learned counsel appearing on behalf of respondent No.6.

3. At the very beginning, let us refer to the resolution of the Board adopted in its meting on 21.2.2007 which reads as under :-

Resolution No. 2(a):
After perusal of records of different Boards like Assam Housing Board, Assam Khadi Board, Assam Publication Board and others its has come to the notice that the superannuation age of the employees of these Boards is 60(sixty) Years. They are not having any Pension benefit and they get only C.P.F. benefit like the employees of the Pollution Control Board, Assam.

In view of this it is resolved that the superannuation age of the employees of the Pollution Control Board, Assam be 60 (sixty) years with effect from to-day (21.02.2007) and the Chairman of the Board is authorized to issue executive order to this effect. .

4. The above resolution was forwarded to the Chief Minister, Govt. of Assam by the letter dated 22nd February, 2007 with copies to various functionaries including the Chief Secretary and the Commissioner to the Govt. of Assam in the Department of Environment and Forests for necessary action. The State Government by the letter dated 9th April, 2007 informed the Chairman of the Board that the State Government has rejected the decision of the Pollution Control Board raising the age of superannuation on the ground that the Pollution Control Board, Assam is a body under the administrative control of Environment & Forest Department and, as such, the Board of Directors cannot take a major policy decision without prior approval of the State Government. It was further informed that the decision of the Board is uncalled for and void-ab-initio.

5. It would appear from the pleadings on record, submissions made and the documents available on file that the question to be resolved in this appeal is whether the Board could have raised the age of superannuation from 59 years to 60 years in respect of its employees without prior approval of the State Go

vernment.

6. There is no dispute that the Assam Pollution Control Board is a creation of the statute. It is a State within the meaning of Article 12 of the Constitution. It has been constituted by the State Government under Section 4 of the Act of 1974 and it is in receipt of financial aid from the State Government for all purposes. Section 29 of the Act empowers the State Government either on its own motion or on an application made to it in this behalf, to call for the records of any case. Section 62 vests with the State Government the power to supercede the State Board. The State Government, therefore, has pervasive control over the affairs of the Board subject to other provisions of the Act

7. Therefore, it cannot be said that the Board is competent to take a decision independent of any say of the State Government in the matter of determining the age of superannuation, unless it is shown that the provisions of the Act vests with the Board the powers to take such a decision of its own. Rule 24 of the Rules framed under the Act relates to recruitment of staff. Rule 24(v) provides that the employees of the Board shall be governed by the same rules in respect of scales of pay etc. as prescribed by the State Government for its employees. Creation of post carrying pay upto certain limit and introduction of scheme for Contributory Provident Fund has been specifically vested with the Board. Neither in the Act nor in any of the Rules framed thereunder, there is any mention about the age of superannuation of the employees of the Board.

8. We are, therefore, in full agreement with the learned Single Judge that the Government of Assam exercises its control over the Board which cannot act independently in all matters without there being concurrence and/or approval of the Government of Assam. The deep and pervasive control of the Government of Assam over the affairs of the Board except certain functions which are specifically enumerated is writ large in different provisions of the Act. Respondent Nos. 1,2 and 4 in the writ petition (State Respondents) submitted their affidavit pleading inter alia that the resolution of the Board raising the age of superannuation from 59 years to 60 years is void-ab-initio in view of the specific provisions contained in Section 12 of the Water (Prevention & Control of Pollution) Act, 1974.

9. The provisions of Section 12 of the Act read as under:-

12. Member-secretary and officers and other employees of Board (1) The terms and conditions of service of the member-secretary shall be such as may be prescribed.

(2) The member-secretary shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board of its Chairman.

(3) Subject to such rules as may be made by the Central Government or, as the case may be, the State Government in this behalf, a Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions.

(3A) The method of recruitment and the terms and conditions of service (including the scales of pay) of the officers (other than the member-secretary) and other employees of the Central Board or a State Board shall be such as may be determined by regulations made by the Central Board or, as the case may be, by the State Board :

Provided that no regulation made under this sub-section shall take effect unless,--

(a) in the case of a regulation made by the Central Board, it is approved by the Central Government; and

(b) in the case of a regulation made by a State Board, it is approved by the State Government. .

10. It would appear from above that the terms and conditions of serv

ice of the member-secretary shall be such as may be prescribed . The word pres
cribed as defined in Section 2(f) means as may be prescribed by rules made unde
r this Act by the Central Government or, as the case may be, the State Governmen
t. It is, therefore, clear from the provisions of sub-section (1) of Section 12
that the terms and conditions of service of the member-secretary of the State Po
llution Board are to be determined by the State Government in exercise of rule m
aking powers. From this, it is clear that the terms and conditions of service ca
nnot be varied in any manner except without sanction of the State Government. Su
b-section (2) again authorises the member-secretary to exercise such powers and
perform such duties as may be determined by the State Government in exercise of
rule making powers. Sub-section (3) in clear language provides that the Board ma
y appoint such officers and employees as it considers necessary subject to such
rules as may be made by the Central Government or, as the case may be, the State
Government. Therefore, the control of the State Government in respect of the se
rvice conditions of the member-secretary of the Board is absolute. That apart, s
ub-section (3A) empowers the State Board to decide about the method of recruitme
nt and the terms and conditions of service only in respect of officers other tha
n the member-secretary. The provision in sub-section (3) alternately makes it ab
undantly clear that the terms and conditions of service of the member-secretary
shall be in accordance with the rules, as may be made by the State Government. T
he Board does not appear to have any power to decide about the terms and conditi
ons of service of the member-secretary. The powers available with the Board are
in respect of the method of recruitment and the terms and conditions of service
of other officers only, and that is also by way of a regulation with prior appro
val of the State Government.

11. It may be mentioned here that the resolution was adopted by the
Board to raise the age of superannuation from 59 to 60 years authorising the Cha
irman to issue 'executive order' to that effect. The Chairman apparently did not
issue any 'executive order', but referred the matter to the State Government fo
r a decision. The State Government in turn by the letter dated 9.4.2007 repudiat
ed the resolution as void-ab-initio. The reaction of the State Government on th
e resolution of the Board appears to be more than what was necessary in the give
n circumstances of the case. The State Government could very well reject the pro
posal in its discretion. The question would have been altogether different had t
he Chairman acted upon the resolution and issued 'executive order' raising the a
ge of superannuation in pursuance of the resolution.

12. From the above discussion, it appears that the Board cannot take
any decision with regard to the age of superannuation which is essentially a fu
nction of the State Government. In respect of the member-secretary, the best cou
rse would have been to move the State Government with reasons for consideration
of such a proposal for raising the age of superannuation. In our considered opin
ion, the Board had no authority to adopt any resolution in respect of the servic
e conditions of the member-secretary under the provisions of the Act. Irrespecti
ve of whether there is deep and pervasive control of the State Government over t
he affairs of the Board, the question at hand is capable of being answered on in
terpretation of the provisions of Section 12 of the Act.

13. For reasons above, we find no merit in this appeal. Hence, the a
ppeal is dismissed.